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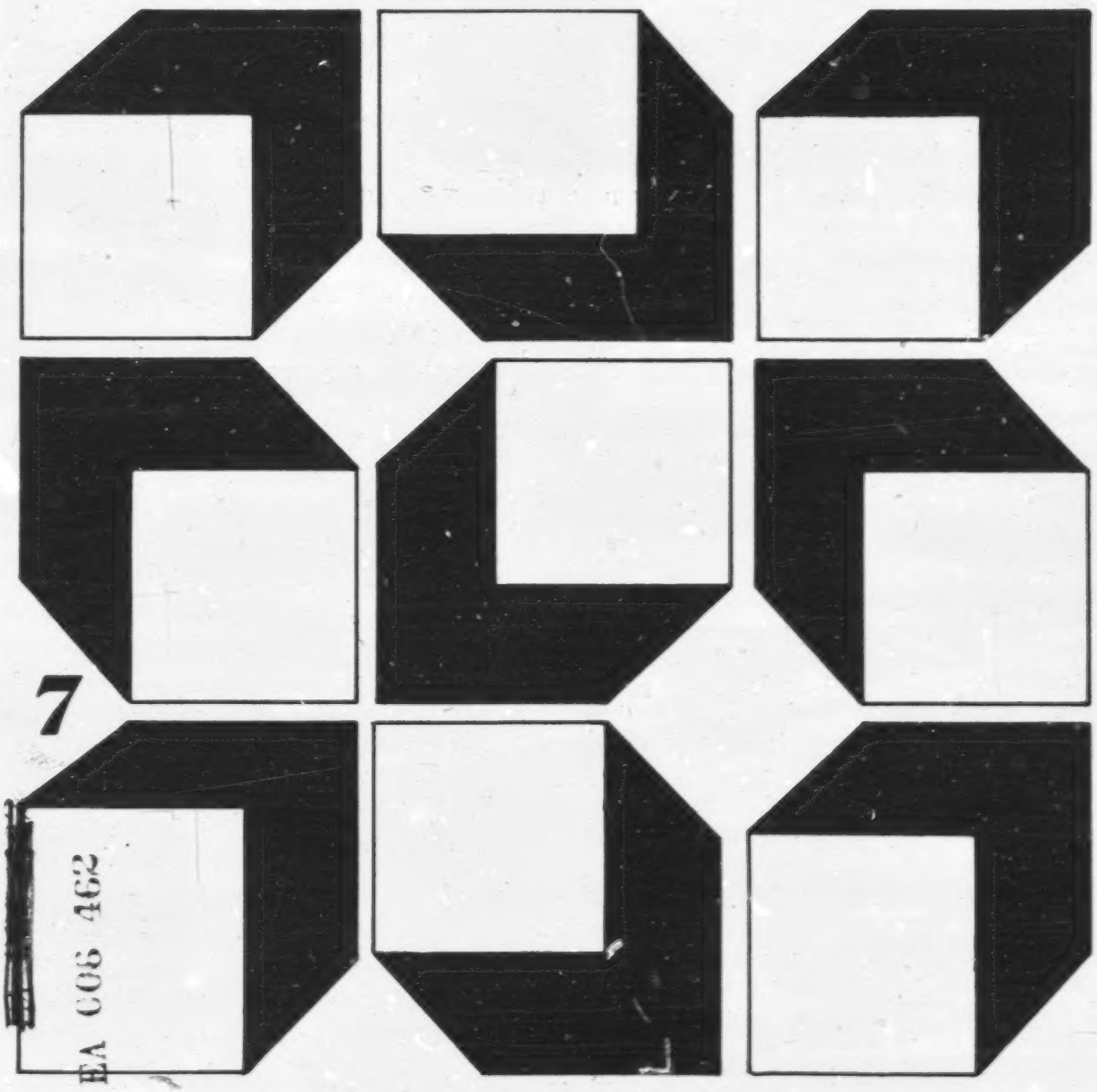
ABSTRACT

The author has developed a unique concept of the education ombudsman/woman through continuing research over a period of four years. The concept is being published in its entirety for the first time in this pamphlet. The author discusses the history of the ombudsman/woman concept and its use in higher education, and he explains how such a position might be used in an elementary or secondary district. He specifically links the functions of an ombudsman/woman to a student's right to procedural due process and describes how an ombudsman/woman can enhance a student's procedural due process rights. A 41-item bibliography is included. (JF)

PERSPECTIVE

ED-OM: A Comprehensive Appoach to Institutional Justice in Education



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ED-OM: A COMPREHENSIVE APPROACH TO INSTITUTIONAL JUSTICE IN EDUCATION

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New Jersey State Department of Education

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INTRODUCTION

Since the beginning of 1972 the New Jersey Department of Education has covered a wide range of educational issues through the publication of Perspective papers. These papers have examined, among other issues, the Hispanic experience, merit pay for teachers, neurological impairment of children and cable television.

It has been our purpose to provide information in specific areas of concern and to stimulate discussion with respect to "frontier issues" in education. The response to our efforts, reflected in part by requests for copies of the publications, has been very gratifying.

Several of the papers previously published have had implications bearing on the fundamental issue of justice in education. The paper presented herein addresses the issue directly. A. William Larson, Esq., has developed a unique concept of the education ombudsman/woman through continuing research over a period of four years. He has presented aspects of the concept at meetings of board of education members, school administrators and teachers. The concept is being published in its entirety for the first time in this edition of the Perspective series.

We hope that this paper will contribute importantly to the ongoing dialogue that looks to the attainment of a higher level of justice in education.

Bernard A. Kaplan
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Division of Research, Planning and Evaluation

July 1974

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I. THE OMBUDSMAN IN HISTORICAL PERSPECTIVE

The Thirty-second American Assembly, a convocation sponsored by Columbia University in October, 1967, described the ombudsman as "an independent, high-level officer who receives complaints, who pursues inquiries into the matters involved, and who makes recommendations for suitable action."[1]

Although the concept of the ombudsman/ombudswoman in education (ED-OM)[2] is a relatively new one, having developed in the United States during the past ten years, the historical origins can be traced to the Constitution of Sweden adopted in 1809. Several features stand out in the structure and functioning of the ombudsman in Sweden:[3]

- the ombudsman is an office of the legislature, not the executive
- he (or she) is an impartial investigator and politically independent
- he has no authority to direct that any specific action be taken
- he does have power to undertake investigation on his own initiative
- he handles appeals from administrative decisions informally and recommends remedial action when complaints are found to be justified, publicizing recommendations in his discretion by means of reports to the legislature and by direct reference to the press

Today some form of ombudsman, bearing various designations, is in effect in approximately twenty countries throughout the world.[4] As the idea has blossomed, how has it worked? According to Rowat,[5]

> The transplanted versions of the Ombudsman system seem to have worked with great success. Before adoption, especially in Denmark, the civil servants opposed the plan because they feared harassment by the Ombudsman and the attendant publicity. Afterward, however, they rapidly changed their views because they found that the Ombudsman's rejection of unwarranted complaints enhanced the public's confidence in the civil service. They even found the Ombudsman to be a valuable protection in their own complaints against superiors!

The ombudsman abroad receives complaints from individuals who believe that they have suffered injustice, ranging from bad manners to abuse of authority, at the hands of those responsible to administer public policy. His jurisdiction extends to all agencies of the national government, including the ministry or department of education.

Procedures

To begin with, the ombudsman serves as a useful source of information by referring citizens to proper parties for the necessary attention to particular problems. Similarly, the ombudsman ascertains that a complainant has exhausted available administrative channels before he will consider a complaint.

There are occasions when the ombudsman can tell from the nature of a complaint and/or the complainant that no affirmative action is indicated. The complaint, for example, may be identical with one previously investigated and found to have been unjustified. In this event the ombudsman is expected to provide a clear and courteous explanation to the complainant of the reasons for rejecting the complaint without undertaking an investigation of facts.

With respect to all other complaints the ombudsman does make an investigation of relevant facts. As a first step he requests an explanation from the administrator or administrators involved. If that is insufficient, the ombudsman can examine pertinent records and interview witnesses as necessary to ascertain the facts and form a judgment on the merit of the complaint.

When investigation discloses that a complaint is not justified, the ombudsman advises the complainant accordingly. Upon finding that a complaint is justified, the ombudsman recommends to the agency concerned appropriate action to rectify the injustice and, if possible, to prevent a recurrence. The recommendation may range from a simple apology to a reversal of decision. The ombudsman submits an annual report to the legislature. This report includes a review of activities, record of complaints and recommendations, and details with respect to the action ultimately taken on each complaint of injustice. In addition to such annual reports, the ombudsman in his descretion may submit special reports from time to time. All reports are made available to the press.

Advantages of Ombudsmen Systems Abroad

Experience abroad indicates that the functioning of ombudsmen has contributed to improvement in public administration. Administrators try to do a better job when there is an ombudsman on the scene, apart from recommendations that result from his investigations. And his recommendations, of course, point to specific actions to upgrade administrative performance.

Through his handling of complaints, the ombudsman becomes aware of patterns of undesirable administrative behavior which isolated complaints do not reveal. This leads to legislative action to improve the quality of administration through constructive changes in policy, procedures and personnel.

People seem to have more faith and confidence in public administration as a result of the work of ombudsmen. Civil servants, in turn, are protected against unfounded complaints. Although a complainant may not accept the word of an agency official as a valid explanation for a perceived injustice, the same explanation coming from an impartial ombudsman is often accepted. Moreover, the ombudsman in the first instance tends to draw away from administrators and on to himself the complaints of persistent cranks.

Disadvantages of the Ombudsman

Gellhorn comments pertinently on the dysfunctional aspects of ombudsmen:[6]

> Overextension may unfortunately be an inherent element in the Ombudsman system. Those who vaunt the system greatly stress the importance of the Ombudsman's personality and his directly participating in every phase of official superintendence. This emphasis upon personalism may discourage the Ombudsman's using other governmental

> resources, lest he seem to have adopted "bureaucratic methods" and to be "passing the buck" ... Ombudsman everywhere tend to stretch themselves as close as possible to the unrealistic limits fixed by uninformed public desire. While unwillingness to stretch at all would be deplorable, willingness to stretch too far has its perils, too.

A Balance Sheet On Ombudsmen Abroad

It may be true, as some have contended, that the need for an ombudsman is symptomatic of the pathology of an institution. The presence of an ombudsman, however, does not preclude other undertakings addressed to this problem, but can prove to be a significant factor, in and of itself, in overcoming institutional pathology. And it is clearly indicated by Gellhorn, among other, that the concept enjoys uniformly strong support among the people in whose interests the ombudsman serves.

II. THE OMBUDSMAN IN EDUCATION

Colleges and Universities

In the United States there are functioning ombudsmen in various governmental agencies and in the private sector. Most notable, however, has been the proliferation of ombudsmen in education. Between 1966 and 1973 approximately 100 colleges and universities established the office of ombudsman, including Michigan State, Cornell, San Diego State, Texas, Detroit, Columbia, Washington and Louisville.[7]

The experience at colleges and universities is instructive. Rowland summed up the situation in 1969:[8]

> While students in groups have learned to exert considerable influence through effective organization, students as individuals sometimes suffer from neglect, abuse, and manipulation. Unsure about procedures and confused by the diffusion of authority, they feel a frustration akin to that of the citizen who cannot "fight city hall." Institutions like Michigan State have recognized the value of providing a competent advocate to help the student cope with a discrepancy in power and size between himself and the institution. Student response generally has been favorable.

In describing a model for the campus ombudsman, Rowland makes several pertinent suggestions:[9]

> He should be receptive to individual grievances, both of an academic and non-academic nature, concerning the institution. He should decide which complaints are within his jurisdiction and competence and which merit his investigation.
>
> He should use reasoned persuasion to bring about redress of genuine student grievances as expeditiously and equitably as possible.
>
> Where a pattern of student grievances develops, he should work for a change in regulations, procedures, or personnel to prevent such problems from recurring.
>
> He should conduct investigations in response to student complaints, not on his own initiative.
>
> He should have access to all campus offices and files, except medical, psychological, and government-classified records.
>
> He should keep confidential, written records on each case he considers.
>
> When rebuffed in the course of an investigation, he should have the authority to appeal to the chief administrative officer for intervention.

> He should not have authority to take disciplinary action, reverse decisions, or circumvent regulations. His power should lie in his prestige, persuasiveness, and persistence in stating his views to persons involved in a grievance and, if necessary, to their organizational superiors.
>
> He should supplement, not supercede, other means of redress for student grievances.
>
> He should make periodic reports of a general nature that are widely publicized to all members of the institution. He may also make confidential reports with recommendations to the chief administrative officer.
>
> He should have a private office separate from the main administration building and conveniently located for students.

A field survey of university ombudsmen in different parts of the country disclosed wide variation in their designation, structure and functioning, although with few exceptions they are employed and funded by the institutions involved in their investigations. On the other hand, the suggestions of Rowland are generally observed, and campus ombudsmen recognize that both invulnerability and accessibility are required in order for an ombudsman to be fully effective. Each ombudsman interviewed in the survey believes that he functions with adequate safeguards in this respect, but it is not always clear that the view is shared by students.[10]

Accessibility does not appear to present a problem, nor does invulnerability when a complaint relates to financial aid, housing, parking or other such administrative matters. When a complaint concerns the operations of central administration, however, the invulnerability of the campus ombudsman is open to question. Not even an ombudsman is expected to bite the hand that feeds him.

The existence of injustice is abundantly clear in any event, and Speck has found that the "ombudsman appears to have made significant strides toward restoring the human factor to a complex and impersonal system of higher education."[11]

School Districts

Is there any reason to feel that the education ombudsman would not be fully as useful in secondary and elementary schools? One might not agree with Werner that the "public educational system...constitutes one of the most subtle tyrannies of our time,"[12] but still share the view of Grossman that the education ombudsman is a "creative concept for making school boards more responsive to community needs."[13]

The first call for an education ombudsman at the district level was probably heard in Montgomery County, Maryland. Students there made the following recommendation to the Board of Education in a report submitted in March, 1969:[14]

> What Needs to Be Done - 1. Establishment of an ombudsman office, responsible directly to the Board of Education, to investigate and resolve complaints from students. If the goals and realities of the school system are ever to be brought into line with one another, it is essential that a procedure be developed to deal with instances of questionable

> treatment of students. Every student in county schools should be informed of the existence and purpose of the ombudsman office, and they should be made to feel free to make use of it without any fear of retaliation. It is important that the ombudsman office not be in a position of having to be defensive about the actions of school administrators and teachers. Ombudsman officials, independent of such pressures and biases, must take a stance of neutrality and work vigorously to correct the thousands of injustices which occur every year to students who presently have no way of seeking redress.

In 1970 the Boston School Committee and the Massachusetts Advisory Council on Education co-sponsored a major study of the Boston school department. Among other recommendations in their report was one that called for "an ombudsman to investigate citizen or consumer complaints about the system."[15] Several school districts in California now have ombudsmen ; itisprobably not a coincidence that no other state has a larger number of education ombudsmen on college and university campuses. The ombudsman has made an appearance in New Jersey districts (Englewood, for example), and at least some of the responsibilities of an ombudsman have been assigned to others in various schools in New York City and elsewhere.

Is the education ombudsman a panacea for problems involving students in schools, colleges and universities? Certainly not. But experience in higher education indicates that an ombudsman, properly designated, structured and funded, can have a salutary effect in making educational institutions and school systems more responsive to the needs of students.

III. PROCEDURAL DUE PROCESS FOR STUDENTS

This paper has thus far concerned the education ombudsman as an instrumentality for dealing with complaints of injustice related to the operations of an educational institution or a school system. In a comprehensive approach to justice in education, it is also necessary to take account of grievances arising from alleged violation of student rights. And this means providing for procedural due process - PDP for students.

The United States Supreme Court has made clear that Constitutional protections do not stop at the schoolhouse gate. The turning point may have been reached as long ago as 1943 when the Court, in rejecting the expulsion of a student who refused to salute the flag, said:[16]

> The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and of all its creatures - the Board of Education not excepted. These have, or course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.

Subsequent decisions of the Supreme Court have helped to clarify the relationships of all concerned in schools with respect to these freedoms. Student conduct was the focus of the Court in a 1969 decision upholding the right of students to protest government policy in Viet Nam by wearing black armbands. In its opinion the Court underscored some of the difficulty in dealing with the question of student rights in schools:[17]

> While the Court has repeatedly affirmed the need for comprehensive authority of the states and of school officials to prescribe and control conduct in the schools, the problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities.
>
> Any departure from absolute regimentation in schools may cause trouble, but undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.
>
> To justify prohibition of a particular expression of opinion in the schools there must be something more than a mere desire to avoid the discomfort and umpleasantness that accompanies an unpopular viewpoint.

The courts, of course, did not initiate the action that has led to judicial recasting of student rights and responsibilities. Students and others went to court for this purpose. The important point to be noted is that the substantive rights of students are a fact of school life under the provisions

of the First Amendment. This fact is reflected in the commentary of numerous pamphlets, including A Guide to Student Rights & Responsibilities in New Jersey published by the State Department of Education. The introduction of the pamphlet, unlike many others, correctly emphasizes both the rights and the responsibilities of students, and also underscores the obligation to take the necessary action to protect these rights:[18]

> Students have a fundamental right to a free public education. You have a corresponding responsibility to join with other members of your school community in respecting the rights and responsibilities of others in that community, and in establishing a climate of learning within the school.
>
> This Guide summarizes your basic rights and responsibilities as a New Jersey high school student, according to the laws of the land as expressed in the United States and New Jersey Constitutions, State school law, federal and state court decisions, and decisions of the Commissioner of Education and the State Board of Education as of August, 1971.
>
> ...It is the responsibility of all members of the school community - students, parents, staff, administrators - to see that these rights are protected.

With respect to student responsibilities, Dolce's comments are helpful:[19]

> The term "responsibility"...means the freedom to experience consequences of actions...
>
> The necessity of experiencing consequences of actions implies a drastic change in the doctrine of in loco parentis, which bequeaths to the school not only responsibility for the welfare of minors but also responsibility for preventing actions which would result in harmful consequences...
>
> The failure to shift responsibility (the freedom to experience consequences of actions) from school to the individual is in part responsible for the current state of confusion concerning the issues and for the excesses of behavior which are manifest at times.

Regarding the rights of students, the Guide includes sections on: hair and dress; buttons and armbands; flag salute and pledge of allegiance; distribution of literature; assembly and petition; school records; police in the schools; locker searches; corporal punishment; suspension and expulsion; and appeals. In common with most similar publications, the Guide is largely devoted to an exposition of the substantive rights of students, but there is specific reference to "due process of law" in provisions concerning suspension and expulsion, i.e., disciplinary action initiated by school authorities.

It is also important to consider the requirements of due process when a student feels that there has been a violation of his or her rights under the Constitution. Litigation, of course, is a recourse available to students in the absence of procedural due process within a school.

Some school administrators and board members insist that their districts have always maintained adequate provisions for procedural due process. Others, however, may share the strong dissent lodged by Marker and Mehlinger:[20]

> The typical high school employs people who listen to but do not act upon the grievances of students. There is no ombudsman to intervene on behalf of the students with the bureaucracy. Counselors are really tools for administrators, despite the professional ideology of counseling. Who can a student complain to if his teacher is incompetent, is lazy, is a racist? A student must either accomodate himself to the situation or rebel - silently, by dropping out of school or by turning in poor work or overtly, by setting fire to trash cans or triggering fire alarms.
>
> Due process is not available to students. When students are accused by teachers of violations of school rules, they already stand convicted. There is no presumption of innocence until evidence is heard. No witnesses are called; no opportunity is afforded the student to defend himself.

There has been significant progress, subsequent to the criticism of Marker and Mehlinger in 1970, in providing for due process when students are accused of "violations of school rules." With respect to alleged violations of student rights, however, no comparable concern for the requirements of procedural due process is evident.

Consider the situation in the New York City school system. The City has specific provisions governing suspension by the principal in the event of overt behavior disrupting school activities or creating a danger of physical injury. Regarding student complaints and grievances, the efficaceous handling of which might reduce the possibility of disruption, procedures are much less specific. In describing the situation at George Washington High School in 1970, Witkin refers to "the many outlets for (student) complaints, grievances and requests through teachers, administrators, grade advisors and guidance counselors, student government, student-teacher relations committee, and the Consultative Council."[21] The very variety of options indicated by Witkin clearly underscores the absence of specific provision for procedural due process in the School.

A publication of the New York City Board of Education in September, 1970, moves in the right direction, but vaguely:[22]

> Students shall receive annually upon the opening of school a publication setting forth rules and regulations to which students are subject. This publication shall also include a statement of the rights and responsibilities of students. It shall be distributed to parents as well.

In a provision governing appeals in New York City the most notable feature is the complete absence of pertinent details with respect to form of appeal, nature of hearing, time limits for action, etc.

The State Board of Education in New Jersey expressed its concern for procedural due process in a communication to all school districts in the State five years ago. After first noting that "Any disruption of the schools or interference with their normal operation...cannot be condoned or tolerated," the Board had this to say:[23]

> At the same time, from the standpoint of justice, we must recognize that there are conditions in need of improvement and that students should have some means by which their concerns may be effectively expressed, considered and disposed of fairly.
>
> Official avenues for the expression and correction of grievances already exist. If attempts to resolve a problem are not successful at a local level recourse may be had to the county superintendent of schools for his advice and counsel in attempting to effect a solution. The law also provides for resort to the Commissioner of Education who is expressly empowered to hear and decide controversies and disputes related to the conduct of the public schools. Any person may file an appeal to the Commissioner of Education on behalf of any student or group of students protesting an act or a failure to act on the part of local school authorities. After hearing and considering all of the facts in the situation, the Commissioner has authority to take appropriate corrective action.
>
> But despite the existence of these means available at the county and state levels for resolving disputes, the State Board strongly recommends that local boards of education formulate and implement procedures - if such procedures have not been adopted - by which pupils and their parents may make known their concerns and have them considered and disposed of fairly. Such procedures, soundly conceived, well understood in advance and fairly executed, can do much to produce concord and the avoidance of outbreaks of lawless behavior which sometimes result from lack of communication.

The State Board went on to request each school district to submit a "specific plan for dealing with student grievances." Under date of October 3, 1973, the Commissioner of Education asked all school districts in the State to submit "copies of all such plans in effect at this time" in order to "keep...abreast of any modification that may have been adopted over the...years."[24]

A review of responses discloses that, with rare exceptions, the approximately 600 school districts in the State of New Jersey still have only the most rudimentary plans for "dealing with student grievances," notwithstanding the recommendation of the State Board of Education in 1969.[25]

The lack of adequate provisions for procedural due process for high school students in New Jersey, as well as in other states, is probably accounted for by the relative peace and quite that has generally characterized the educational scene since 1969. Many schoolmen may have a "let-well-enough-alone" attitude, even if "well enough" means a student body turned from disruptive behavior to sullen hostility, widespread apathy, and passivity bordering on oblivion. Most educators, of course, are greatly concerned about students who "tune out" and "turn off," whether or not drug abuse is involved, and the more discerning educators recognize that the prevailing calm may be, as Lockridge suggests, only a period of "frozen violence." [26]

It may not be unreasonable to expect at least some New Jersey school districts to take advantage of the opportunity that exists at this time for further constructive action regarding student rights and responsibilities. Some board members and superintendents will seize the day to eliminate a potential cause of future disruptions, with attendant confrontation politics, by establishing procedural due process for students in accord with the clear call of the State Board of Education.

Scott quotes Wendell French in referring to organizational (i.e., procedural) due process as the way to insure that redress against arbitrary authority is available:[27]

> ...organizational due process consists of established procedures for handling complaints and grievances, protection against punative action for using such established procedures, and careful, systematic, and thorough review of the substance of the complaints and grievances.

In following up on this definition, Scott observes that the judicial function of administrators "has been sub-ordinated in emphasis to the legislative (policy-making) and executive (action-evoking)." Appeal systems, according to Scott, "are formalized means through which the modern participant in a bureaucratic organization can 'cry haro' if he feels his rights are jeapordized."[28] Such systems "may never fully supplant informal methods of settling complaints and ameliorating conflicts (but) the forces of bureaucratization which produce programs of procedural due process will cause administrators to reflect more carefully on their judicial function."[29]

Assuming that a board of education decides, as a matter of policy, to provide procedural due process for students, the question becomes one of determining the most suitable form for the district or for a school within the district. There is no single "best" form of PDP that can serve as a model for all schools or school districts. Various examples can be found in organizations from coast to coast - private and public, with and without negotiated employment agreements. But there are several features, as Scott points out, in any acceptable model:[30]

> All have the right to seek redress.
>
> The same rules and regulations for using the system apply to everyone.
>
> The settlements will be determined, recorded, and honored according to the rules of the system.
>
> The system may be used without fear of prejudice and reprisal.
>
> In each case the rights, duties, and obligations of members are spelled out in documents...that provide the statutory base of right which if abrogated by an administrative act may be appealed through an internal machinery of organization.
>
> The principle of non-suspension of administrative decisions during an appeal is firmly grounded...
>
> The principle of local handling of grievances and complaints is also solidly established...

> Each system is a bypass of the chain of command unilaterally created by the top administration of the organization...(and) represents a violation of one of the most important classical principles - the unity of command within a determinate hierarchy.
>
> The (unity of command) principle is violated for the sake of achieving justice in administration through the separation of the judicial and the executive and legislative functions.

The foregoing particulars require the establishment of procedural due process on some basis other than the bureaucratic review that presently prevails in school districts and other institutions. Even when the steps involved in bureaucratic review are set forth in writing with detailed provisions for time limits, etc., which is rarely the case, such a procedure fails to assure justice in sustaining the rights of students. Bureaucratic review is defective in that the judicial function (hearings and appeals) is not separated from the legislative (board of education) and the executive (superintendent/principal). This situation is the kind that is often condemned on the ground that the same parties act as prosecutor, judge and jury.

IV. THE ED-OM COMBINED WITH PDP

The education ombudsman/ombudswoman (ED-OM) and procedural due process (PDP) for students are handmaidens in an ongoing effort to humanize educational bureaucracy. Injustices occur in every institution and the ED-OM, functioning comprehensively with responsibility for PDP, can be an effective force in attacking the problem. And that means getting at underlying causes of hostility, apathy and passivity on the part of students, and the parents of students, in elementary and secondary schools.

Extensive research has disclosed that the concept of the ED-OM is, unfortunately, in grave danger of debasement. Historically, as previously noted, both accessibility and invulnerability were correctly regarded as prerequisites to the successful functioning of an ombudsman. But these imperatives have largely been lost in the shuffle of American education where students frequently view the ED-OM as an appendage of the administration. Although questionable invulnerability does not prevent some measure of useful service by an ED-OM, his credibility is not sufficient when a complaint is against the central administration and/or the governing body.

What needs to be done in a school system to realize fully the potentialities of an ED-OM? There are two common faults that have to be avoided. An ED-OM should not be designated without the concurrence of students and parents, and he should not depend on the district for his main source of income.

The first point should not present a serious problem, but there may be some difficulty in regard to the second one. It is vital, however, to prevent the contamination of the concept that results from having an ED-OM who is financially dependent on the institution that he has to investigate in response to complaints.

One way to overcome the negatives is by designating a student, parent or someone else to serve as ED-OM on a voluntary basis. It may also be possible to have students, or students and faculty jointly, select and fund the ED-OM. Both of these alternatives, however, have obvious limitations.

It would be preferable for a board of education, in consultation with students and others concerned, to retain an ED-OM under a contract providing for professional services. Such a contract should not establish a full-time retainer to avoid compromising essential invulnerability; no more than one fourth of an ED-OM's income ought to be derived from a single school district.

The professional services of the ED-OM should include: (1) investigation and recommendation of appropriate action on complaints of injustice to students and parents arising out of the operations of the district; (2) establishment of procedural due process in the district to provide a fair and reasonable means to receive, consider, and act upon grievances alleging violation of student rights; (3) suggestion of any change in district policy, procedures or personnel indicated by patterns of such complaints and grievances; (4) mediation of inter-group conflicts.

(1) Investigation and recommendation of appropriate action on complaints of injustice to students and parents arising out of the operations of the district.

This provision represents the traditional role of the ombudsman. In a given district the ED-OM should recruit, select, train and supervise one Assistant ED-OM for each school to receive and record complaints of injustice to students and parents, to provide helpful information, to refer complaints when appropriate, and to investigate and report to the ED-OM the facts concerning any other of such complaints that relate to schools in the district.

The ED-OM should personally investigate any complaints of injustice that relate to the central administration or to the board of education, conduct any other personal investigation of facts that may be advisable in his discretion, review the facts developed in all investigations, evaluate the merit of each investigated complaint, recommend appropriate action to provide a remedy for every injustice found to exist, and advise a complainant accordingly when the facts indicate there was no injustice for which a remedy should be recommended.

The complaints of injustice considered by the ED-OM do not relate to the substantive rights of students spelled out in A Guide to Student Rights & Responsibilities in New Jersey.[31] Complaints based on these rights invite consideration through the facilities of PDP, as discussed below, so that published decisions can provide useful precedents for future reference. The ED-OM, on the other hand, records the resolution of a complaint for the purpose of periodic reports, but he makes no public announcement of the action taken. (Although ombudsmen abroad can publicize recommendations through the press, this action would appear to be both unnecessary and undesirable in the work of an ED-OM.)

The complaints investigated by the ED-OM might involve charges of rudeness, delay, misinformation, oppression, manipulation, discrimination, incompetence, inefficiency, unfair treatment, abuse of authority or some other injustice suffered in the course of bureaucratic functioning. With respect to all such complaints the ED-OM undertakes informally to effect remedial action whenever called for by the facts.

No one, of course, has to use the services of the ED-OM; his accessibility is required for those who wish to avail themselves of his assistance. It is quite clear, however, that a qualified ED-OM - properly designated, structured and funded - will find no lack of interest on the part of students and parents. Moreover, teachers and administrators can be expected to suggest to some complainants that they consult the ED-OM.

It is reasonable to assume that most of the complaints concerning elementary schools, originating with parents, will be appropriate for consideration by the ED-OM. In the secondary schools, however, complaints will more often originate with students and frequently involve the alleged violation of student rights. It is this expectation that points up the particular need of PDP for high schools.

(2) Establishment of procedural due process in the district to provide a fair and reasonable means to receive, consider and act upon grievances alleging violation of student rights.

The ED-OM should develop, in consultation with students, parents, teachers and administrators, a model or models of PDP. He should also assist in the implementation of such model(s) and advise all parties concerned on any question that arises in the functioning of PDP.

PDP can have significant effects on the lives of students. It is of the utmost importance, therefore, that they participate in its development. Parents, teachers and administrators should also participate inasmuch as they, too, have a vital interest in PDP. The role of the ED-OM, in this approach to PDP, is to facilitate the adoption of procedural due process. He should initiate the necessary consultations, serve as a technical resource, and continue to be available as required.

The model that may prove to be most suitable is a school court (or grievance committee). This may be composed only of students, but it is not unreasonable to have a court include others as well - teachers, administrators, parents. The important point is that the school court is organized so as to function in the manner of an independent judiciary. (There is an analogy to be seen in the military where reforms following World War II led to the establishment of courts martial that were no longer under the control and influence of commanding officers.)

Another model that can satisfy the requirements of institutional justice is arbitration. This model maintains a separation of the judicial from the legislative and executive functions, but it places the decision-making power in the hands of a person or persons outside of the system. There is nothing inherently wrong with such an arrangement, but many of those concerned, including students, may prefer to provide for PDP by having internal resolution of issues involving the rights of students.

The serious limitations of bureaucratic review have been noted heretofore. Many districts may wish to retain such a system of appeals, however, if only as an alternative to a school court or arbitration. In this event it is important to refine the procedures to make bureaucratic review as effective as possible.

(3) Suggestion of any change in district policy, procedures or personnel indicated by patterns of complaints and grievances.

The third aspect of the ED-OM's functioning comes into play after he has spent some time investigating complaints of injustice and observing grievances pertaining to student rights. The ED-OM will be able to pinpoint problem areas as patterns of complaints and/or grievances begin to take shape. For example, there may be repeated complaints about a particular aspect of district operations. The responsibility of the ED-OM under these circumstances is to try to identify the cause or causes of the complaints and/or grievances. When he has satisfied himself in this regard, the ED-OM should suggest appropriate action to clear up the situation. His suggestion might be to provide closer supervision, strengthen staff, improve communication - or make some other change in policy, procedures or personnel.

Depending on the kind of a change that he finds to be needed, the ED-OM should submit his suggestion to the head of the office, principal, superintendent, or otherwise as appropriate. If the ED-OM does not feel sure about the kind of a change that ought to be made, he can propose a special administrative study for this purpose.

(4) Mediation of intergroup conflicts

In a cogent analysis of the educational scene in 1970, Bailey had this to say of the high school principal: "As with other public executives, his prime task is conflict management and he knows it."[31] In any organization, of course, some degree of conflict is inevitable. Indeed, conflict may at times be desirable, and the proper concern of an executive is management, not merely elimination or resolution, of conflict.

PDP is an essential element in the effective management of conflict. Similarly, the ED-OM's investigation of complaints can materially reduce the possibility of unnecessary conflict. Not all school complaints and grievances, however, concern but one student at a time. What has come to be regarded as "confrontation politics" in schools includes a variety of conflicts involving students and/or parents.

The resolution of such conflicts does not fall within the purview of the ED-OM as described above, However, because of his impartial role in the disposition of complaints, the ED-OM should be able to render an additional service of value by the mediation of intergroup conflicts when so requested by the superintendent.

It is possible, of course, for a school district to have an education ombudsman without providing explicity for procedural due process for students. Conversely, a district can establish procedural due process without necessarily designating an ombudsman for students and parents. And a board of education can try to provide for the handling of complaints and grievances without going "outside" the system to retain professional services. In the opinion of the writer, however, the most promising approach to institutional justice in education involves the retention of a qualified ED-OM, on a fee basis, after appropriate consultation with students and others concerned.

Although the focal point of this paper is recommended action at the local level it, should also be noted that there is a role for state education departments. In the first instance it would be desirable for a department of education to have an ombudsman/ombudswoman, also retained under contract, to receive, investigate and recommend appropriate action on complaints of injustice related to operations of the department.

The New Jersey State Department of Education can also play an important role with respect to school district ED-OM's. Through Educational Improvements Centers, for example, the Department can assist districts by establishing ED-OM training programs. This would create a supply of qualified men and women to serve as school district ED-OMs, and also provide for training of assistants to an ED-OM to carry out their information, referral and investigatory functions.

This kind of initiative by a department of education can accelerate the development of the ED-OM to promote institutional justice in education, thus contributing to what may reasonably be regarded as an important element in school district accountability. Compulsory attendance laws, in and of themselves, should make justice in education a paramount concern of the states.

V. ESTABLISHING PDP FOR STUDENTS

A. Definitions

PDP - "PDP" is procedural due process provided for as a fair and reasonable means to receive, consider and act upon the grievance of a student who feels that he or she has suffered a violation of student rights.

Staff - The "staff" consists of all employees in a high school, including administrators, teachers and support staff.

Complaint - A "complaint" is an allegation of a violation of student rights expressed orally and informally to a member of the staff.

Complainant - A "complainant" is a student who presents a complaint.

Grievance - A "grievance" is a written presentation of an unresolved complaint that includes the following information:

a. Name, class schedule, home address and telephone.
b. Brief statement of facts relevant to grievance.
c. Particular right of student allegedly violated.
d. Decision desired by grievant.
e. Names of other students, if any, similarly aggrieved.
f. Staff member to whom complaint was made.
g. Date and time of presenting grievance.

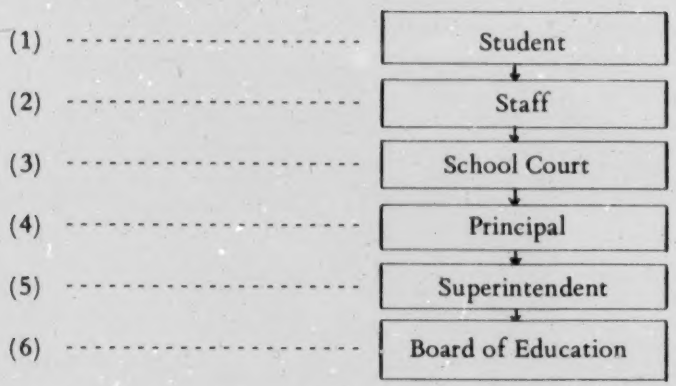
Grievant - A "grievant" is a student who presents a grievance.

Hearing - A "hearing" is a proceeding at which a grievant and others involved in the situation to which a grievance is related, together with any desired representatives and/or witnesses, are heard and evidence received.

Presiding Member - The "Presiding Member" is the member of a School Court elected by its members to conduct hearings until such time as a successor is elected.

Record - The "record" is an account of what takes place at a hearing kept in sufficient detail, by stenographic transcript or tape recording, to permit thorough review in event of appeal.

B. School Court Model



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(1) Student complains to member of staff alleging violation of student rights.

(2) Staff member receiving complaint promptly tries to resolve it to satisfaction of all concerned.

(3) If complaint is not resolved to satisfaction of student, he may, as a grievant, within five (5) days of receiving proposed resolution of complaint, present to Presiding Member of School Court a grievance that includes, in writing, the following:

a. Name, class schedule, home address and telephone.
b. Brief statement of facts relevant to grievance.
c. Particular right of student allegedly violated.
d. Decision of Court desired by grievant.
e. Names of other students, if any, similarly aggrieved.
f. Staff member to whom complaint was made.
g. Date and time of presenting grievance.

Grievant hands copies of grievance to Principal and others involved in situation to which grievance is related.

Within seven (7) days of receiving grievance, Presiding Member convenes School Court to hold hearing to receive testimony and other evidence relevant to grievance. The hearing is conducted informally, including such cross-examination as Presiding Member deems necessary to establish essential facts, and a record is kept to provide for review in event of appeal.

Within five (5) days of conclusion of hearing, Presiding Member announces decision of Court, which shall be determined by majority vote of its members, and advises all concerned, including Principal and Superintendent, by copy.

Each high school establishing PDP for students by means of a School Court shall determine the composition of the Court. Possibilities include the officers of student government or a group consisting of two student elected by the student body, two teachers elected by the faculty, one administrator elected by the administrative staff, one support staff member elected by the support staff, and one parent elected by the Parent-Teacher Association or its equivalent.

(4) If grievant is not satisfied with decision of School Court, he may, within five (5) days of receiving such decision, appeal in writing to Principal, advising Presiding Member and Superintendent by copy. In the appeal grievant sets forth reasons for dissatisfaction with decision of the Court.

Principal reviews record forwarded by Presiding Member, consults in his discretion, and announces decision on appeal within seven (7) days of its receipt, advising all concerned, including Presiding Member and Superintendent, by copy.

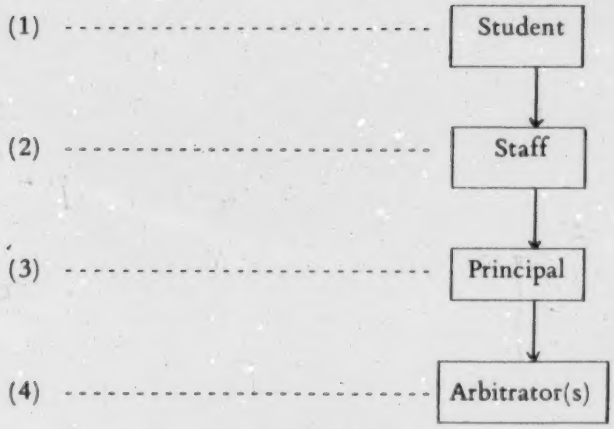
(5) If grievant is not satisfied with decision of Principal, he may, within five (5) days of receiving such decision, appeal in writing to Superintendent, advising Presiding Member and Principal by copy.

Superintendent reviews record forwarded by Principal, consults in his discretion, and announces decision on appeal within ten (10) days of its receipt, advising all concerned, including Presiding Member, Principal and President of Board of Education, by copy.

(6) If grievant is not satisfied with decision of Superintendent, he may, within five (5) days of receiving such decision, appeal in writing to Board of Education, advising Presiding Member, Principal and Superintendent by copy.

Board of Education reviews record forwarded by Superintendent, consults in its discretion, and announces final decision on appeal (subject to possible further appeal to Commissioner of Education and/or the courts) within ten (10) days of its receipt, advising all concerned by copy.

C. Arbitration Model



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(1) Student complains to member of staff alleging violation of student rights.

(2) Staff member receiving complaint promptly tries to resolve it to satisfaction of all concerned.

(3) If complaint is not resolved to satisfaction of student, he may, within five (5) days of receiving proposed resolution of complaint, appeal orally to Principal, who undertakes informally to work out a satisfactory solution to complaint.

(4) If student is not satisfied with solution proposed by Principal, he may, as a grievant, within five (5) days of its receipt, present to Arbitrator (or Chairman of a Panel of Arbitrators, as the case may be) a grievance that includes, in writing, the following:

a. Name, class schedule, home address and telephone.
b. Brief statement of facts relevant to grievance.
c. Particular right of student allegedly violated.
d. Decision of Arbitrator(s) desired by grievant.
e. Names of other students, if any, similarly aggreived.
f. Staff member to whom complaint was made.
g. Date and time of presenting grievance.

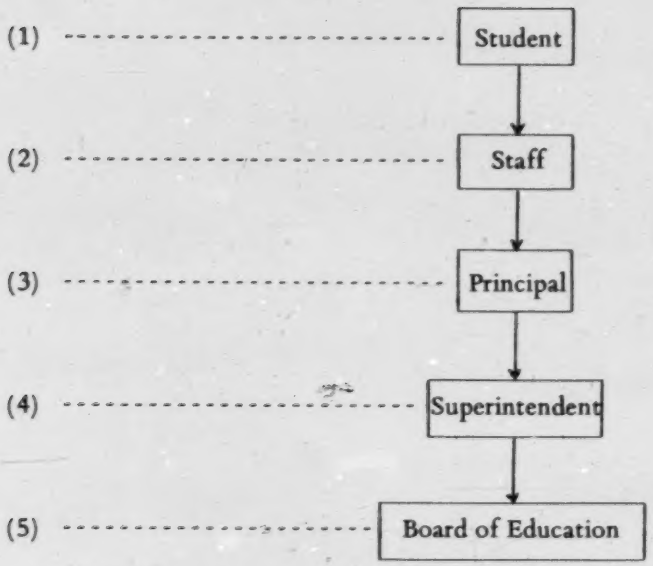
Grievant hands copies of grievance to Principal and others involved in situation to which grievance is related.

Within ten (10) days of receiving grievance, Arbitrator (or Chairman of the Panel) holds hearing to receive testimony and other evidence relevant to grievance. The hearing is conducted informally, including such cross-examination as the Arbitrator (or Chairman of the Panel) deems necessary to establish essential facts, and a record is kept in event of appeal.

Within five (5) days of conclusion of hearing, Arbitrator (or Chairman of the Panel) announces final decision (subject to possible further appeal to Commissioner of Education and/or the courts), and advises all concerned, including Principal and Superintendent, by copy.

Each high school establishing PDP for students by means of an Arbitrator or Arbitrators shall determine upon their designation. Possibilities include one or more members of the community served by the school or a professional source of such service.

D. Bureaucratic Review Model



(1) Student complains to member of staff alleging violation of student rights.

(2) Staff member receiving complaint promptly tries to resolve it to satisfaction of all concerned.

(3) If complaint is not resolved to satisfaction of student, he may, as a grievant, within five (5) days of receiving proposed resolution of complaint, present to Principal a grievance that includes, in writing, the following:

a. Name, class schedule, home address and telephone.
b. Brief statement of facts relevant to grievance.
c. Particular right of student allegedly violated.
d. Decision of Principal desired by grievant.
e. Names of other students, if any, similarly aggrieved.
f. Staff member to whom complaint was made.
g. Date and time of presenting grievance.

Grievant hands copies of grievance to others involved in situation to which grievance is related.

Within seven (7) days of receiving grievance, Principal or his designee holds hearing to receive testimony and other evidence relevant to grievance. The hearing is conducted informally, including such cross-examination as the Principal (or his designee) deems necessary to establish essential facts, and a record is kept in event of appeal.

Within five (5) days of conclusion of hearing, Principal announces decision and advises all concerned, including Superintendent, by copy.

(4) If grievant is not satisfied with decision announced by Principal, he may, within five (5) days of receiving such decision, appeal in writing to Superintendent, advising Principal by copy. In the appeal grievant sets forth reasons for dissatisfaction with decision of the Principal.

Superintendent reviews record forwarded by Principal, consults in his discretion, and announces decision on appeal within ten (10) days of its receipt, advising all concerned, including Principal and President of Board of Education, by copy.

In the event that complaint involves Principal in the first instance, student presents grievance directly to Superintendent and proceedings ensue in accord with (3) above, Superintendent or his designee holding the prescribed hearing.

(5) If grievant is not satisfied with decision of Superintendent, he may, within five (5) days of receiving such decision, appeal in writing to Board of Education, advising Principal and Superintendent by copy.

Board of Education reviews record forwarded by Superintendent, consults in its discretion, and announces final decision on appeal (subject to possible further appeal to Commissioner of Education and/or the courts) within ten (10) days of its receipt, advising all concerned by copy.

E. General Provisions

1. No effort will be spared to resolve complaints and grievances at the earliest possible times and at the lowest possible levels.

2. The processing of complaints and grievances will be treated as confidential with no publicity until a final decision has been reached.

3. All parties involved in complaints and grievances will be free from any recrimination or reprisal.

4. The school will provide facilities to assist students in presenting grievances and making appeals.

5. All elements of the school constituency will participate in the refinement of PDP through periodic evaluations.

6. PDP is intended to augment the functioning of a school principal and to detract in no way from the proper exercise of his authority.

7. An administrative decision will remain in effect during the course of an appeal related to it.

F. Speciman Contract

WITNESSETH: on the _____ day of _____, 1974, this Agreement entered into by and between_____ (hereinafter referred to as "DISTRICT") and_____ (hereinafter referred to as "ED-OM").

WHEREAS, all school districts in the State of New Jersey were advised in March, 1969, that "the State Board (of Education) strongly recommends that local boards of education formulate and implement procedures...by which pupils and their parents may make known their concerns and have them considered and disposed of fairly," and

WHEREAS, many of such concerns involve the rights of students as set forth in A Guide to Student Rights & Responsibilities in New Jersey, and

WHEREAS, the Board of Education of this DISTRICT (hereinafter referred to as "BOARD") and the Superintendent of Schools (hereinafter referred to as "SUPERINTENDENT") believe that it would be in the best interests of the DISTRICT to make further provision for institutional justice in schools by retaining the professional services of an education ombudsman or ombudswoman, and

WHEREAS, the BOARD has had the benefit of consultation in this regard with students, parents, teachers and administrators.

NOW, THEREFORE, BE IT RESOLVED, that_____ is hereby designated ED-OM for the DISTRICT to serve for a term of one (1) year effective _____, 1974, and

BE IT FURTHER RESOLVED, that the ED-OM shall be responsible for:

1. Investigation and recommendation of appropriate action on complaints of injustice to students and parents arising out of the operations of the DISTRICT.

2. Establishment of Procedural Due Process (PDP) in the DISTRICT to provide a fair and reasonable means to receive, consider and act upon grievances alleging violation of student rights.

3. Suggestion of any change in DISTRICT policy, procedures or personnel indicated by patterns of such complaints and grievances.

4. Mediation of intergroup conflicts.

BE IT FURTHER RESOLVED, that the ED-OM, pursuant to the foregoing, shall perform the following services:

a. Prepare the draft of an announcement of the DISTRICT'S designation of an ED-OM.

b. Hold a meeting with interested students, parents, teachers and administrators to explain the functioning of the ED-OM.

c. Recruit, select, train and supervise one (1) Assistant ED-OM for each school to receive and record complaints of injustice to students and parents, to provide helpful information, to refer complaints when appropriate, and to investigate and report to the ED-OM the facts concerning any other of such complaints that relate to schools in the DISTRICT.

d. investigate personally any complaints of injustice that relate to the central administration of the DISTRICT or to the BOARD, conduct any other personal investigation of facts that may be advisable in his discretion, review the facts developed in all investigations, evaluate the merit of each investigated complaint, recommend appropriate action to provide a remedy for every injustice found to exist, and advise complainant accordingly when the facts indicate that there was no injustice for which a remedy should be recommended.

e. Develop, in consultation with students, parents, teachers and administrators, a model or models of PDP for students.

f. Assist in the implementation of such model(s), and advise the parties concerned on any question that arises in the functioning of PDP.

g. Design the forms required to process complaints and grievances.

h. Suggest any change in DISTRICT policy, procedures or personnel indicated by patterns of complaints and grievances that would tend to eliminate the causes thereof.

i. Undertake, as the request of the SUPERINTENDENT, the mediation of intergroup conflicts.

j. Prepare and submit, at two (2) meetings with the BOARD and the SUPERINTENDENT during the term of this Agreement, written reports on the disposition of all complaints of injustice to students, of all grievances alleging violation of student rights, and of all mediated intergroup conflicts.

BE IT FURTHER RESOLVED, that the DISTRICT shall provide adequate work space and facilities for the ED-OM and Assistant ED-OMs, reproduce the necessary supply of forms for processing complaints and grievances, and arrange for the accessibility of staff and records required in the course of investigations, and

BE IT FURTHER RESOLVED, that the DISTRICT shall compensate the ED-OM for services as hereinabove set forth, including any expenses that may be incurred, in the total amount of_____
(**$**_____), payable at the rate of_____

IN WITNESS WHEREOF, the undersigned do hereby affix their signs and seals hereto.

_____
ED-OM

_____
(School District)

By:_____

G. Questions and Answers

1. Question: Aren't teachers and administrators going to oppose the idea of an ED-OM on the ground that it will stir up students and parents to cause more aggravation for professionals in the system?

   Answer: Some such opposition to any new venture in education can be expected. However, it has been clearly established that the ombudsman/ombudswoman provides a direct benefit to professionals by serving as a buffer between them and complainants. The ED-OM will draw away from professionals (and support staff) many complaints that now cause a lot of irritation.

   It is, in any event, difficult to justify the opposition of professionals who have themselves arranged for grievance procedures through the organizations that represent them in negotiations regarding the conditions of employment. The ED-OM, after all, is essentially designed to provide commensurate protection to the consumers of educational services delivered by school systems. A board of education ought to feel fully as responsible to provide for the needs of consumers as for the district staff. That's what the rising tide of consumerism-in-education is all about.

2. Question: Isn't it the function of members of a board of education to consider complaints about the system?

   Answer: The board of education, of course, is basically responsible to make educational policy consistent with the perceived needs of the various elements of its constituency. Members of a board, among others in the system, should and do consider complaints, but the responsibility of the board of education as a governing body is to decide if it would be desirable policy to provide for more effective handling of the complaints of students and parents by means of an ED-OM.

3. Question: Wouldn't it be preferable to designate an ED-OM from within the system so that he or she would be familiar with policy, procedures and personnel?

   Answer: All things being equal, there is an obvious advantage to having an ED-OM who starts off with intimate knowledge of the system. However, it is impossible to guarantee the vital invulnerability of an ED-OM unless he is not organically related to the system and does not have to depend on the system for the main part of his income. There is another problem involved in having an ED-OM who is a part of the system, namely, that he would probably be unable to function with complete objectivity after having formed relationships during the course of his work in other capacities.

   In any event, lack of familiarity with the system would be overcome quickly when an "outside" ED-OM began to work. (It is interesting in this regard to note the view of a group of students in a New York City high school; they unanimously voiced a preference for an ED-OM having no previous association with the system.)

4. Question: With respect to patterns of complaints and grievances doesn't the ED-OM function in effect as a management consultant?

   Answer: It would be more accurate to say that the ED-OM provides district management with important input as part of the total information system. In this regard the ED-OM can make a further contribution toward the fulfillment of school district accountability.

5. Question: Can the ED-OM be set up to act on the complaints and grievances of members of the staff?

   Answer: This is possible, but the need for an ED-OM is most acute in the case of students and parents. Organizations representing teachers, administrators and support staff negotiate contracts with boards of education that include provision for grievance procedures related to alleged violation of contractual commitments. The ED-OM can be structured to handle staff complaints even in districts having such employment agreements, but he would only be concerned with complaints that do not constitute possible grievances under a contract.

6. Question: Should the ED-OM be able to go to the press with information about complaints, recommendations and action taken?

   Answer: Although reference to the press has been available to ombudsmen historically, this would appear to be unnecessary, and undesirable, in education. It would be a better procedure to limit publicity to the ED-OM's periodic reports to the board of education.

7. Question: Can a district establish PDP without having an ED-OM?

   Answer: Of course, and it is unnecessary to go outside the system for this purpose. An ED-OM is essential, however, to assure that proper action is taken with respect to complaints of injustice apart from those alleging the violation of student rights. In addition, the ED-OM can be of material assistance in the establishment and operation of PDP. It is the combination of the ED-OM and PDP that represents a comprehensive approach to institutional justice in education.

8. Question: Is the ED-OM an advocate for students and parents?

   Answer: Not in the same sense of legal counsel retained to represent a student in disciplinary proceedings or in litigation involving the school district. The ED-OM receives complaints with no predetermined position on their merits or any obligation to argue on behalf of complainants. His job is to examine, impartially and objectively, the nature of each complaint and the relevant facts in order to determine if an injustice has occurred. Only when he perceives an injustice does the ED-OM become an advocate in the sense that he undertakes through recommendation, to secure appropriate remedial action by individual (or the office) against whom (or which) the complaint was made.

Historically, the ombudsman has had to reject or dismiss the majority of complaints on the ground of lack of merit because no injustice was found to have occurred or for some other reason. (The frustration and irritation giving rise to an individual's complaint, of course, can stem from a variety of causes, many of which may have nothing whatsoever to do with schools.)

9. Question: Who is qualified to serve as an ED-OM?

Answer: There has been no position description written for the ED-OM. The qualifications desired are indicated by the nature of the responsibilities outlined in this paper. He should have had experience and training in working with people in terms of problem-solving, in the elements of due process, and in conflict management. Obvious advantages are indicated in the case of a lawyer, but legal training is not essential. The ED-OM should be skilled in getting at the facts.

The ED-OM should also be a person whose background and experience reflects the capability to deal with complaints in education understandingly, sensitively, impartially and objectively - in short, fairly. Although the ED-OM should not be someone who has been in the system, it would be helpful if he is no stranger to public education.

10. Question: Who is qualified to serve as Assistant ED-OM?

Answer: The necessary qualifications for the information, referral and investigatory functions can be developed through careful recruitment, selection, training and supervision by the ED-OM of individuals residing in the district.

11. Question: How can the expense of an ED-OM be justified in a period of tight school district budgets?

Answer: There is an element of additional cost, direct or indirect, involved in establishing an ED-OM on any basis. The question, as always, is one of priorities. When a board of education spends at least several million dollars to operate a school system, it is not only justifiable but entirely reasonable to spend several thousand to make the system more responsive to the needs of those whom it is primarily designed to serve.

12. Question: If an ED-OM is engaged to serve under retainer, how long a period should the contract cover?

Answer: The retainer should be for a term of one year at the outset. Subject to satisfactory experience in the first year, it would then be appropriate to extend the contract for two or more years. The work involved in establishing PDP would be heavier in the first year, but it remains to be seen whether the volume of complaints increases in the second year when students and parents become more familiar with the facilities of the ED-OM and more confident in his ability to be of service to them.

13. Question: How would a board of education evaluate the effectiveness of an ED-OM?

Answer: The evaluation of an ED-OM should be related primarily to the satisfactory disposition of complaints and grievances, as well as mediated intergroup conflicts. In due course the work of the ED-OM should also be reflected in more efficient operations based on changes in policy, procedures and personnel indicated by patterns of complaints and grievances.

14. Question: Can the PDP models be used for hearings and appeals related to the possible suspension or explusion of students?

Answer: Yes, and some form of Bureaucratic Review usually applies to such disciplinary cases at the present time. With respect to a School Court and Arbitration, the recommended models, it would be preferable to limit their functions in the first instance to handling student grievances. Subject to satisfactory experience in this regard, a district might well decide on an extension of jurisdiction to include all hearings that involve students. In the interim a district should make sure that Bureaucratic Review operates on the basis of specific provisions covering all aspects of hearings and appeals. These would include, of course, notice and charges before a hearing to comply with the requirements of procedural due process in disciplinary cases.

15. Question: What is the role of the ED-OM in proceedings related to disciplinary action initiated by school authorities?

Answer: The role of the ED-OM should be limited to functioning as a resource with respect to technical questions that pertain to such proceedings. Disciplinary actions involve consideration of both student rights and responsibilities, with due regard for law and justice, and do not lend themselves to investigation by the ED-OM. As a technical resource, however, the ED-OM can be helpful in assuring that the requirements of procedural due process are properly observed.

VI. FOOTNOTES

1 Stanley V. Anderson (ed.), Ombudsmen for American Government, The American Assembly, Columbia University (Englewood Cliffs, N.J., 1968), p. iii.

2 The term "ED-OM," coined by the author, avoids the chauvinism inherent in "ombudsman" and is easier to pronounce than either "ombudsman" or "ombudswoman."

3 Donald C. Rowat, "The Spread of the Ombudsman Idea," Anderson, op. cit., pp. 9-10.

4 Walter Gellhorn, Ombudsmen and Others , Harvard University Press (Cambridge, 1967).

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6 Gellhorn, op. cit., p. 432.

7 David G. Speck, "Ombudsman on Campus: A Review," Currents '71, January 1971.

8 Howard Ray Rowland, "The Campus Ombudsman," Today's Education, October, 1969.

9 Ibid.

10 The author surveyed the functioning of education ombudsmen at Michigan State University, The Ohio State University, University of Denver, University of California at Berkeley and the University of San Francisco.

11 Speck, op. cit.

12 Roy Werner, "Educational Tyranny and the Ombudsman," School & Society, October 1967.

13 Howard Grossman, "Do School Districts Need an Ombudsman?" American School Board Journal, December, 1967.

14 Ronald and Beatrice Gross, Radical School Reform , Simon and Schuster (New York, 1969).

15 Joseph M. Cronin, The School Administrator, May, 1971.

16 West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943).

17 Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).

18 A Guide to Student Rights & Responsibilities in New Jersey, sponsored by New Jersey Association of High School Councils and New Jersey Association of Secondary School Principals, printed by New Jersey Department of Education (Trenton, 1971).

19 Carl J. Dolce, "A Sensible Assessment of Student Rights and Responsibilities," The School Administrator, September, 1971.

20 Gerald W. Marker and Howard D. Mehlinger, "Schools, Politics, Rebellion, and Other Youthful Interests," The School and The Democratic Environment, The Danforth Foundation and the Ford Foundation (New York, 1970).

21 Irving Witkin, Diary of a Teacher - The Crisis at George Washington High School, United Federation of Teachers, Local 2 (New York, 1971), p. 9.

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23 George F. Smith, President, New Jersey State Board of Education, Memorandum to Secretaries of Boards of Education, County Superintendents of Schools, Local Superintendents of Schools, and Administrative Principals (Trenton, March 14, 1969).

24 Carl L. Marburger, Commissioner of Education, State of New Jersey, Memorandum to Secretaries of Boards of Education, Local Superintendents of Schools, and Administrative Principals (Trenton, October 3, 1972).

25 A notable exception is the procedural due process for students established in the Lawrence Township Public Schools.

26 Oral comment to the author by R. Calvin Lockridge, Fellow, A National Program for Educational Leadership.

27 William G. Scott, The Management of Conflict - Appeal Systems in Organizations, Richard D. Irwin, Inc. and the Dorsey Press, (1965).

28 Scott credits A. A. Berle, Jr. as his source for the information that "haro" was a feudal cry to a lord or a king for redress of a wrong.

29 Scott, op. cit., emphasis supplied.

30 Scott, op. cit.

31 Stephen K. Bailey, Disruption in Urban Public Secondary Schools, National Association of Secondary School Principals (Washington, 1970), p. 50.

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The New Jersey State Department of Education is generally in accord with the philosophy of the authors of "Perspective" papers. However, the views expressed in these papers are the result of planning and research in areas of educational interest, and do not necessarily reflect current policies of the Department of Education.